

REMARKS

A. BACKGROUND

The present Amendment is in response to the Office Action mailed December 23, 2008. Claims 3-7, 27 and 28 were pending and rejected in view of cited art.¹ Claims 3 and 5 are amended, and new claims 29-35 are added. Claims 3-7 and 27-35 are now pending in view of the above amendments.²

Reconsideration of the application is respectfully requested in view of the above amendments to the claims and the following remarks. For the Examiner's convenience and reference, Applicant's remarks are presented in the order in which the corresponding issues were raised in the Office Action.

Please note that the following remarks are not intended to be an exhaustive enumeration of the distinctions between any cited references and the claimed invention. Rather, the distinctions identified and discussed below are presented solely by way of example to illustrate some of the differences between the claimed invention and the cited references. In addition, Applicant requests that the Examiner carefully review any references discussed below to ensure that Applicant's understanding and discussion of the references, if any, is consistent with the Examiner's understanding.

B. EXAMINER'S INTERVIEW

Applicant's express their appreciation to the Examiner for conducting an interview with Applicant's representative on April 14, 2009. The substance of the interview is included in this response.

C. PRIOR ART REJECTIONS

I. REJECTION UNDER 35 U.S.C. § 103

The Office Action rejected claims 3-7 and 27 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,242,456 (*Buelna*) in view of U.S. Patent No. 5,797,929 (*Andreas*) and U.S. Patent No. 6,733,509 (*Nobles*). Claim 28 was rejected under U.S.C. § 103(a) as being unpatentable over *Buelna* in view of *Andreas* and *Nobles* as applied to claim 3, and

¹ Although the prior art status of the cited art is not being challenged at this time, Applicant reserves the right to challenge the prior art status of the cited art at any appropriate time, should the need arise. Accordingly, any arguments and amendments made herein should not be construed as acquiescing to any prior art status of the cited art.

² Support for the claim amendments and/or new claim(s) can be found throughout the drawings as originally filed.

further in view of U.S. Publication No. 20020010480 (*Sancoff*). Applicant traverses the Examiner's rejection for obviousness on the grounds that the references – either individually or in combination – fail to teach or suggest each and every element of the rejected claims.

Buelna was cited as disclosing "a handle assembly, the handle disposed adjacent the proximal end of the shaft (Figure 1). Buelna discloses the handle assembly further including a first lever 60 and a second lever 62 that are operatively coupled to the suture retainer and cutter member, respectively" (Office Action, p. 3). As taught in *Buelna*, the suture can be tensioned through proximal movement of the body member "by the user placing the index and ring fingers on lateral retaining members 60 . . . [and] then depressing plunger 62 at the proximal end of shaft 12 using the thumb . . . [to] retract the body member 16 in a proximal direction" (Col. 5, ll. 29-36). It appears that the lateral retaining members 60 are attached to the body member in such a way to enable proximal movement of the body member relative to the plunger 62. Claim 3 has been amended to recite, in part, "independently operable first and second levers slidably received within the handle." Applicant has been unable to find any teaching in *Buelna* of either lateral retaining member 60 being slidable within the "handle disposed adjacent the proximal end of the shaft" (See Office Action, p. 3).

Sancoff was cited as teaching "a first lever 22 and a second lever 24 each being movable with respect to a handle 14" (Office Action, p. 6). The levers 22 and 24 of *Sancoff* extend away from a housing 12 in the same direction as the handle 14 (see Figs. 1 and 2). "When wire cutting actuator 24 is pulled toward handle 14 (FIG. 2), wire cutting actuator 24 pivots on its pivot pin 73 (FIG. 4) so as to drive wire cutting linkage coupler 70 proximally" (Para. 0072). Similarly, "[w]hen jaw closing actuator 22 is pulled toward handle 14 (FIG. 2), jaw closing actuator 22 pivots on its pivot pin 67 (FIG. 4) so as to drive jaw linkage coupler 66 distally" (Para. 0071). Claim 3 has been amended to recite "the second lever . . . being transverse to the handle." Applicant has been unable to find any teaching in *Sancoff* that either of the levers 22, 24 extend transversely to the housing 12 or transversely to and through the housing 12.

Neither *Buelna* nor *Sancoff* teach or suggest the inclusion of "first and second levers slidably received within the handle . . . the second lever operatively coupled to the cutting member . . . and being transverse to the handle" as recited in independent claim 3 or "first and second levers slidably received within the handle . . . the second lever operatively coupled to the cutting member . . . and being transverse to and extending through the handle" as recited in new independent claim 29. Rather, it appears that the lateral retaining members 60 are fixed to and

not "slidably received within the handle" as recited, in part, in independent claims 3 and 29 and the levers of *Buelna* and *Sancoff* are neither "transverse to the handle" or housing or "transverse to and extending through the handle."

Andreas was cited as disclosing "a suturing instrument 100 within an outer shaft 104 having a groove . . . formed in a side thereof, the groove extending from the distal end toward the proximal end, the groove being in communication with an opening 120 formed in the side of the shaft, the opening disposed proximal the distal end of the shaft", while *Nobles* was cited as teaching "a suture retainer 528, 532 disposed within a cutting member 536, both disposed in a shaft 515, wherein the suture retainer is moved within the shaft and within the cutting member and the cutting member moves around the suture retainer to cut the suture" (Office Action, pp. 3-4). Applicant respectfully submits that neither *Andreas* nor *Nobles* overcome the deficiencies of *Buelna* or *Sancoff*.

In view of the above, Applicant respectfully submits that *Buelna*, *Andreas*, *Nobles*, or *Sancoff*, whether alone or in combination, do not teach or suggest the invention claimed in independent claim 3. For at least the same reason, Applicant also respectfully submits that *Buelna*, *Andreas*, *Nobles*, or *Sancoff*, whether alone or in combination, do not teach or suggest the inventions claimed in dependent claims 4-7, 27 and 28. As such, Applicant respectfully requests withdrawal of the rejection of claims 3-7, 27 and 28 under Section 103.

D. CONCLUSION

In view of the foregoing, Applicant respectfully submits that the other rejections to the claims are now moot and do not, therefore, need to be addressed individually at this time. It will be appreciated, however, that this should not be construed as Applicant acquiescing to any of the purported teachings or assertions made in the last action regarding the cited art or the pending application, including any official notice. Instead, Applicant reserves the right to challenge any of the purported teachings or assertions made in the last action at any appropriate time in the future, should the need arise. Furthermore, to the extent that the Examiner has relied on any Official Notice, explicitly or implicitly, Applicant specifically requests that the Examiner provide references supporting the teachings officially noticed, as well as provide the required motivation or suggestion to combine references with the other art of record.

For at least the foregoing reasons, Applicant respectfully submits that the pending claims are neither anticipated by nor made obvious by the art of record. In the event that the Examiner

finds any remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, the Examiner is requested to contact the undersigned attorney.

Dated this 23rd day of April, 2009.

Respectfully submitted,

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